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United States General Accounting Office
Washington, DC 20548

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April 9, 2002

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable W.J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Bill Thomas
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Modifications to Managed Care Rules Based on Payment Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and Technical Corrections

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), entitled "Medicare Program; Modifications to Managed Care Rules Based on Payment Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and Technical Corrections" (RIN: 0938-AK90). We received the rule on March 27, 2002. It was published in the Federal Register as a final rule on March 22, 2002. 67 Fed. Reg. 13278.

The final rule revises CMS's regulations to reflect changes in the Social Security Act enacted in certain sections of the Medicare, Medicaid, and SCHIP Benefits

Improvement and Protection Act of 2000 (BIPA) relating to the Medicare+Choice program.

Enclosed is our assessment of the CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MODIFICATIONS TO MANAGED CARE RULES
BASED ON PAYMENT PROVISIONS OF THE MEDICARE, MEDICAID,
AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000
AND TECHNICAL CORRECTIONS"
(RIN: 0938-AK90)

(i) Cost-benefit analysis

CMS estimates that the final rule will increase the aggregate payments to Medicare+Choice organizations by approximately \$1 billion in 2001 and approximately \$11 billion during the 5-year period from fiscal years 2001 through 2005.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

CMS prepared a Final Regulatory Flexibility Analysis that examines the economic impact on Medicare+Choice organizations and has concluded that overall the economic impact is significant but positive, generating an increase in payments.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

CMS has determined that "good cause" exists under 5 U.S.C. 553 to waive the issuance of a notice of proposed rulemaking and public comment and to issue the final rule. CMS notes that the final rule incorporates the statutory changes virtually verbatim and that there was no discretion afforded it in implementing the amendments to the statute.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain an information collection that is required to be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 601, 602, 603, 607, 608, 613, 619, and 634 of the Medicare, Medicaid, and SCHIP Benefits Improvement Act of 2000 (Pub. L. 106-554).

Executive Order No. 12866

The final rule has been reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.